

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of Kerman Telephone Co. (U1012C), d/b/a Sebastian, to Review Intrastate Rates and Charges and Rate of Return for Telephone Service Furnished within the State of California, and to Modify Selected Rates

Application 11-12-011
(Filed December 28, 2011)

DECISION GRANTING KERMAN TELEPHONE CO.'S THIRD MOTION FOR INTERIM RATE RELIEF**Summary**

This decision grants Kerman Telephone Co.'s (Kerman) unopposed third motion for interim rate relief. Kerman will be permitted to increase, on an interim basis, its annual draw from the California High Cost Fund A (CHCF-A), effective February 1, 2016, and subject to true-up.

1. Background

Kerman Telephone Co. (Kerman) owns and operates a telephone system that provides local exchange telephone service to some 6,800 customers in the City of Kerman and in surrounding unincorporated areas of Fresno County. Kerman is located approximately 15 miles west of the City of Fresno on State Route 180.

In December 2011, Kerman filed this General Rate Case (GRC) application requesting review of its revenue requirement and an increase in net intrastate revenues of \$2.9 million annually. The proposed increase in revenue requirement equated to a proposed California High Cost Fund A (CHCF-A)

draw by Kerman for test year 2013 of \$6.49 million. Kerman's GRC application did not request a change to its basic residential local exchange rate of \$20.25, but requested other selected rate changes such as charges for Extended Area Service, premise visits, inside wire, intra-building network cable, and returned checks. On January 26, 2012, the Division of Ratepayer Advocates¹ protested Kerman's GRC application requesting that it be stayed during the pendency of Order Instituting Rulemaking (R.) 11-11-007, in which the Commission is currently conducting Phase 2 of its detailed review of the CHCF-A program pursuant to Decision (D.) 10-02-016.

2. The Motion

Kerman bases its motion on the assertion that there has been a lengthy delay between the filing of its GRC application and a final resolution, during which time Kerman claims that its earnings have fallen short of its 10% authorized rate of return, earning 6.11% in 2013 and 4.45% in 2014.¹ Kerman asserts that the delay in this proceeding's resolution has forced it to operate under an "outdated rate structure without any vehicle for relief."² Kerman claims that its motion relies on an inflationary metric to reflect the increase in the price of goods and services since January 2008, when its current rate structure went into effect.³ Kerman uses the Gross Domestic Product Price Index (GDPPI) to grow its revenue requirement since January 2008 and then

¹ Motion at 1, referencing Declaration of David D. Clark (Clark Declaration) ¶ 4, Exh. 2.

² *Id.* at 2.

³ *Id.*

calculates a resulting CHCF-A draw, an approach that Kerman argues is consistent with Commission precedent.⁴

3. Discussion

3.1. Interim-Rate Relief is Warranted by Kerman's Uncontested Factual Allegations and Equitable Showings

We have reviewed the evidence that Kerman has submitted in support of its motion. Assuming that Kerman's allegations are accurate (which will be determined later in the true-up process), they support the granting of the motion. As noted above, Kerman claims that its earnings for 2013 and 2014 were 6.11% and 4.45%, respectively.⁵ Kerman also attached a Means Test to its annual CHCF-A Advice Letter for 2015 to support its claim of 3.67% projected earnings for 2015, based on seven months of annualized data.⁶ Kerman's Regulatory Manager, David Clark, then performed a calculation to adjust Kerman's current revenue requirement for inflationary increases through 2016 based on the GDDPI. He alleges that Kerman's revenue requirement set by its 2008 GRC was \$8,801,394.⁷ He then calculated Kerman's revenue requirement for 2016 which he asserts to be \$9,913,767 when adjusted for inflation.⁸ If these figures are correct, subtracting 2008 revenue requirement (\$8,801,394) from the 2016 revenue requirement (\$9,913,767) leaves a difference of \$1,112,373.⁹

⁴ *Id.* Kerman cites to Decision 94-06-011 (which used GDPPI as a measure of inflation), and Decision (D.) 03-03-009 (*Opinion Establishing Interim Rates for Kerman Telephone Company*, which granted Kerman interim relief in its 2002-2003 rate case).

⁵ Clark Declaration ¶ 4 and Exhibit 2.

⁶ *Id.* ¶ 2 and Exhibit 1.

⁷ *Id.* ¶ 5.

⁸ *Id.*

⁹ *Id.* ¶ 6.

In addition, because the interim draw authorized in this decision would be subject to true-up and possible refund, there would be no harm to Kerman's ratepayers or to contributors to the CHCF-A. If Kerman's final CHCF-A draw is less than the interim draw, Kerman will return the difference to the CHCF-A. If the ultimate draw at the conclusion of the proceeding is larger than the interim draw, additional CHCF-A would be available to make up the difference back to February 1, 2016.

3.2. Interim-Rate Relief is Supported by the Applicable Law

Finally, Kerman's motion is supported by the law on interim rate relief. The California Supreme Court recognized the Commission's power to grant interim rate increases in *City of Los Angeles v. Public Utilities Commission* (1972) 7 Cal.3d 331, 354, 359.¹⁰ In fact, in a previous decision, this Commission granted Kerman interim rate relief where, as here, there had been a delay in the resolution of the proceeding:

The Commission has the authority to set interim rates and has done so on numerous occasions. Despite ORA's argument to the contrary, interim rates need not be premised on an "emergency" alone, but can be adopted for other reasons, including procedural delays. The California Supreme Court addressed precisely this issue in *TURN v. CPUC* (44 Cal. 3d 870, 878 (1988)). In the underlying decision, the Commission granted an interim rate increase while expressly declining to make any finding that "the interim rate increase was required by a financial emergency, or that the reasonableness of the pertinent costs was undisputed." (*Id.* at 875.) The Commission's decision was upheld by the Supreme Court,

¹⁰ The Commission's authority was again recognized in *TURN v. Public Utilities Commission* (1988) 44 Cal.3d 870, 878, citing to *Pacific Telephone and Telegraph Company* (1949) 48 C.P.U.C. 487, 488 ("[i]t is apparent that the authority delegated to this Commission by the Public Utility Act to award rate relief to a public utility carries with it the incidental, necessary and reasonable authority to grant that which is less.")

which found that the overriding circumstance was the prospect of many months and years of hearings and deliberations before a final rate could be determined.¹¹

Without question, there have been delays in the resolution of this proceeding. It is also clear that a decision on this uncontested motion for interim rate relief can be adopted more quickly than a final decision on the merits of the full case. Thus, we find that Kerman has provided a sufficient rationale to grant its motion and allow the additional draw from the CHCF-A, subject to true up.

4. Comments Waived

On February 4, 2016, the assigned ALJ notified the parties via e-mail that an expedited briefing schedule had been set and that any response to Kerman's motion was due on February 9, 2016. On February 4, 2016, counsel for ORA sent an e-mail stating that ORA did not intend to oppose Kerman's motion. No other party has filed any response. Thus, we may treat this motion as unopposed, and comments are deemed waived pursuant Rule 14.6 (c)(2) of the Commission's Rules of Practice and Procedure.

Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Robert M. Mason III is the assigned ALJ.

Findings of Fact

1. On January 29, 2016, Kerman filed its third motion for interim rate relief.
2. On February 4, 2016, the assigned ALJ set an expedited briefing schedule.

¹¹ D.03-03-009 at 6. Other instances where the delay in a proceeding was a factor that resulted in the Commission granting interim relief include *Re Southern California Edison Company* (1988) 28 CPUC 2d 203, 212; and *Pacific Telephone and Telegraph Company* (1976) 80 CPUC 462, 465.

3. On February 4, 2016, counsel for ORA advised that ORA would not file a response to Kerman's third motion.

4. No other party filed a response to Kerman's third motion.

5. There have been delays that have impacted the resolution of the instant proceeding.

6. A decision on this uncontested motion for interim rate relief can be adopted more quickly than a final decision on the merits of the full case.

7. Kerman claims its revenue requirement set by its 2008 GRC at \$8,801,394.

8. Kerman claims it calculated a revenue requirement for 2016 of \$9,913,767, based on Kerman's 2008 GRC revenue requirement adjusted for inflation.

9. Subtracting the 2008 revenue requirement (\$8,801,394) from the 2016 revenue requirement (\$9,913,767) leaves a difference of \$1,112,373.

10. Because the interim draw authorized in this decision would be subject to true-up and possible refund, there would be no harm to Kerman's ratepayers or to contributors to the CHCF-A.

11. Interim rates are appropriate for Kerman.

Conclusions of Law

1. Interim rates are appropriate due to delays in this proceeding.

2. The Commission has the authority to set interim rates.

3. In *TURN v. CPUC*, the California Supreme Court held that the Commission could set interim rates as long as the rate is subject to refund and sufficiently justified.

4. The Commission's Communications Division (CD) should divide the \$1,112,373 into 12 monthly payments from the CHCF-A as follows: once this decision is final, CD should initiate payments combining the additional February

interim relief amounts with the February CHCF-A payment in early March 2016. CD will then pay each succeeding month in 1/12th increments.

5. The payments to Kerman should be subject to true-up and one-time lump sum refund to the CHCF-A fund with interest calculated using the 3-month commercial paper rate when final rates/charges for Kerman are determined. Interest payment, if any, should be calculated from the date of payment by the Communications Division. The refund, if any, should be paid by Kerman within 45 days from the effective date of the final order in this application. On the other hand, if the ultimate draw at the conclusion of the proceeding is larger than the interim draw, additional CHCF-A would be available to make up the difference back to February 1, 2016.

O R D E R

IT IS ORDERED that:

1. The motion for interim relief, filed on January 29, 2016 by Kerman Telephone Co. (Kerman) is granted.
2. Kerman Telephone Co.'s interim relief shall be \$1,112,373 and payable from the California High Cost Fund A.
3. The Commission's Communications Division (CD) shall divide the \$1,112,373 into 12 monthly payments from the California High Cost Fund A (CHCF-A) as follows: once this decision is final, CD shall initiate payments combining the additional February interim relief amounts with the February CHCF-A payment in early March 2016. CD will then pay each succeeding month in 1/12th increments.
4. The payments to Kerman Telephone Co. (Kerman) authorized by this decision shall be subject to true-up and possible refund. The refund, if any, shall

be a one-time lump sum payment from Kerman to the California High Cost Fund A (CHCF-A) fund with interest calculated using the 3-month commercial paper rate from the date of payment by the CD. The lump sum refund, including interest, shall be paid by Kerman within 45 days from the effective date of the final order in this application. On the other hand, if the ultimate draw at the conclusion of the proceeding is larger than the interim draw, additional CHCF-A shall be available to make up the difference back to February 1, 2016.

This order is effective today.

Dated _____, at San Francisco, California.